

SENATE BILL REPORT

SB 5297

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 17, 2011

Title: An act relating to signature gathering.

Brief Description: Concerning signature gathering.

Sponsors: Senators Nelson, Conway, Harper, Chase, White, Kohl-Welles, Kline, Keiser, Prentice and Shin.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 2/10/11, 2/17/11 [DPS-WM, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5297 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Chase and Nelson.

Minority Report: Do not pass.

Signed by Senators Swecker, Ranking Minority Member; Benton and Roach.

Staff: Sharon Swanson (786-7447)

Background: Initiative and Referendum. The Legislature adopted processes for initiative and referendum in 1912. The law as enacted allows:

- initiatives to the people, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted for a vote of the people at the next state general election;
- initiatives to the Legislature, where if petitions are certified to have a sufficient number of signatures by registered voters, the issue is submitted to the Legislature at its next regular session;
- referendum Measures, where laws recently passed by the Legislature are placed on the ballot after certification of petitions signed by registered voters; and
- referendum bills, where voters adopt laws proposed by the Legislature.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the state Constitution, initiative petitions require signatures from 8 percent of the total number of votes cast for the Office of the Governor at the last regular gubernatorial election; referendum petitions require 4 percent.

Initiative and Referendum Petition Filing Fee. The sponsor of an initiative or referendum must file a copy of the proposed language in its entirety with the Secretary of State along with a \$5 filing fee and sworn affidavit, all within the applicable filing deadline.

Signature Gathering. Signature gatherers may circulate signature petition sheets for the initiative or referendum once it is given an approved ballot title and summary. However, the petition needs to include the full text of the measure, as well as a declaration by the signature gatherer on each petition page. The petition sheets must be filed with the Secretary of State and are subject to filing deadlines. If enough signatures are validated, a certification containing the measure's serial number and title is sent to each county for placement on the state general election ballot.

There are constitutional free speech considerations pertaining to initiative and referendum processes that have been addressed in the courts. For example, petition circulation is a protected form of political speech held by the United States Supreme Court. However, the court has also held that elections, including initiatives and referenda, may be regulated for the purposes of maintaining that they are fair and honest.

The boundaries of First Amendment protection were further defined in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), where the court held that states may exercise discretion in protecting the integrity of the initiative and referendum process. The court developed a few general rules regarding the signature gathering process:

- States may not require that signature-gatherers be registered voters since this would prevent non-registered voters from political process participation, and there are less burdensome methods of meeting the states interests in administrative efficiency, fraud detection, and providing voters with information on the process.
- Requiring signature-gatherers to wear identification that displays the signature gatherer's name is impermissible since this may discourage political process participation.

The court previously set the standard of review for First Amendment rights as they relate to petition circulation and signature gathering. For purposes of determining whether a state election regulation violates an individual's First Amendment Right, the court:

- weighs the character and magnitude of the burden the state's regulation imposes on those rights against the interests the state contends justify the burden; and
- considers the extent to which the state's concerns make the burden necessary.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Registration Requirements. All businesses operating in Washington that collect signatures for state or local initiatives, referenda, or recall petitions using paid signature gatherers must annually register with the Secretary of State. Additionally, if these businesses gather signatures for ballot measures not listed on their original registration for the year, they must notify the Secretary of State within five days

of becoming involved with the new petition. Signature collection businesses must provide the following registration information to the Secretary of State:

1. the registered business name, as well as any other names used by the business in its operations;
2. the business' contact information;
3. the full name of the business owner(s) and any assumed names, if applicable;
4. signature of the business owner(s);
5. a signed statement attesting that:
 - a. the business owner(s) has not been convicted of any disqualifying crimes in the past five years;
 - b. the business owner has conducted a criminal background check on each paid signature gatherer that the business employs;
6. a list of state initiatives, referenda, or recall petitions for which signatures will be gathered; and
7. a signed statement of understanding from the business owner regarding applicable Washington laws.

Signatures gathered by an unregistered signature gathering business are not invalidated. Additionally, if these businesses do not register within 72 hours of collecting their first signatures, they are subject to a minimum \$10,000 fine. All collected fines are deposited in the Secretary of State's Revolving Fund.

Initiative and Referendum Petition Filing Fee. The filing fee for initiatives and referenda is raised from \$5 to \$500; \$450 of which is refunded upon certification by the Secretary of State. Exemption from this filing fee is available for sponsors lacking sufficient funds to pay the filing fee and submit at least 500 valid voter signatures.

Signature Gathering. Petitions must expressly include a place for petitioners to sign and print their names and addresses, including the city and county in which they are registered to vote. Additionally, a paid signature gatherer must provide the name of the signature gathering business that employs the paid signature gatherer. Petition gatherers are also expressly required to sign the declaration on the front of each petition sheet, including their address. This signature constitutes a legal oath on the part of the petition gatherer, and petition sheets are checked to verify these signatures.

A signature gathering business is defined as a business whose primary activity or primary source of revenue is gathering signatures for ballot measures, initiatives, or recall petitions.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute as Passed Committee): The requirement that unsigned petitions and petitions submitted by unregistered signature gathering businesses are subject to a full signature check by the Office of the Secretary of State is removed. Any business that fails to register and submit petitions will be subject to a fine of not less than \$500 per petition page submitted. Signature gatherers are required to sign a declaration on the front side of the petition prior to submitting the petition to the Secretary of State. Signature gatherers are prohibited from being within 15 feet of entrances and exits of stand-alone or retail stores, unless authorized by the property owner.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2012.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:

PRO: This bill will create transparency in the initiative process. Abuse and fraud in the initiative process have continued to occur. There are still those that believe that we need no changes to prevent fraud or that fraud must occur on a massive scale before we can do anything to tighten the laws around the initiative process. This bill is not unconstitutional. If you require the information about signature gatherers to be released after the signature gathering process is complete there is no chilling effect. Nineteen of the 24 states that have the initiative process have a registration process. Requiring signature gathers to sign the back of a petition works and helps find bad actors. The people who collect the signatures of voters need to respect the rights of private property owners. Private property owners have the right to have "time, place, and manner" limitations on their property. There are some very aggressive individuals who gather signatures and they accost customers at businesses. Adding amendatory language to clarify the rights of private property owners would be helpful. Abuse of the ballot measure process is increasing. We need to guard against further increases in fraud and abuse. Disclosure requirements do not prevent anyone from speaking. This bill will not chill political speech. This bill is a tool to be used to fix cracks in the system, not gaping cracks. This bill will help cut down on the filing of frivolous petitions. Paid signature gathering is big business.

CON: This bill will totally shut down the initiative process. The Secretary of State does not support the major components of this bill. This bill is a solution in search of a problem. Be sure to budget for the cost of defending the lawsuits that are to come. This bill will chill political speech and will cause citizens to have their signatures thrown out through no fault of their own. This bill is an attempt to shut down the initiative process. The definition of a signature gathering business in this bill will not capture unions and the most recent fraud case came from an SEIU member. This bill will make it difficult for people to participate in their own government process. People want to compare Washington to Oregon; and because Oregon passed similar legislation – that means Washington needs to do so?

OTHER: This bill is unnecessary. If the Public Records Act worked properly this bill would not be necessary. The filing fee amount is too high. Mandatory fines of \$10,000 is too much.

Persons Testifying: PRO: Joel Foster, Ballot Initiative Strategy Center; Lew Granofsky, Fieldworks; Adam Glickman, SEIU 775; Kim Abel, League of Women Voters; Karen Lee, AARP; Kristina Logsdon, Ballot Initiative Network; Katie Blinn, Secretary of State; Craig Salins, Washington Public Campaigns; Steve Breaux, Washington Public Interest Research Group; Jan Gee, Washington Food Industry Association.

CON: Jennie Stephenson, citizen; Tim Eyman, Voters Want More Choices; Edward Agazarm, Citizens Solutions; Michael Carrington, self; Katie Blinn, Secretary of State.

OTHER: Arthur West, citizen; Steve Gano, Walmart.